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Attorneys for Defendant and Counterclaim-
Plaintiff NETAPP, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

PERSONALWEB TECHNOLOGIES, LLC
AND LEVEL 3 COMMUNICATIONS, LLC,

Plaintiffs,

vs.

NETAPP, INC.

Defendant.

Case No. 5:13-cv-1359-EJD

**STATEMENT OF RECENT DECISION BY
USPTO REJECTING CLAIM 35 OF U.S.
PATENT NO. 5,978,791**

Hon. Edward J. Davila

Hearing Date: 01/10/2014

Time: 9:00 a.m.

Courtroom: Fifth Floor, Courtroom 4

1 Pursuant to Local Rule 7-3(d), Defendant NetApp, Inc. ("NetApp") brings to the Court's
2 attention the Office Action in the *Ex Parte* Reexamination of claim 35 of U.S. Patent No. 5,978,791
3 (the "'791 Patent") issued by the United States Patent and Trademark Office ("USPTO") on
4 December 6, 2013 rejecting Claim 35 of the '791 Patent. This is relevant to NetApp's Motion to
5 Stay Pending *Ex Parte* Reexamination and *Inter Partes* Review (Dkt. No. 7), which is currently
6 pending before this Court.

7 The Office Action, attached hereto as Exhibit A, addresses the *ex parte* reexamination of
8 claim 35 of the '791 Patent. The USPTO has now rejected Claim 35 under 35 U.S.C. 102(a) or (e)
9 as being anticipated by U.S. Patent No. 5,649,196, issued to Woodhill, et al. on July 15, 1997.

10 The remaining four claims asserted against NetApp are the subject of the ongoing *inter*
11 *partes* review filed by EMC Corporation and VMWare, Inc. ("EMC IPR"). The final hearing on
12 EMC's IPR was held on December 16, 2013.

13 Respectfully submitted,

14 DUANE MORRIS LLP

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16 Dated: December 19, 2013

By: /s/ Patrick S. Salceda
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